

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00595/12
With
MA/050/00040/16

Reserved on: 21.02.2018
Pronounced on: 14.03.2018

C O R A M
HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

Ajay Kumar Bharti, Son of Sri Bharathari Paswan, resident of Village- Ghoghat, P.O.- Ghorghat, P.S.- Bariyarpur, District- Munger, presently working to the post of Diesel Assistant Driver at Jamalpur (Bihar) under Malda Division of Eastern Railway.

..... Applicant.

- By Advocate: - Mr. Gautam Saha

-Versus-

1. The Union of India through the General Manager, Eastern Railway, Fairlie Place, Kolkata.
2. The Chief Personnel Officer, Eastern Railway, Fairlie Place, Kolkata.
3. The Divisional Railway Manager, Malda Division, Eastern Railway, Malda.
4. The Senior Divisional Personnel Officer, Malda Division, Eastern Railway, Malda.
5. The Senior Divisional Mechanical Engineer, Malda Division, Eastern Railway, Malda.
6. The Senior Divisional Financial Manager, Malda Division, Eastern Railway, Malda.
7. Assistant Mechanical Engineer, Eastern Railway, Sahibganj.
8. Section Controller, Malda Division, Eastern Railway, Malda.
9. Section Engineer (Loco), Eastern Railway, Jamalpur.
10. Station Manager, Eastern Railway, Barharwa.
11. 2nd Enquiry Officer, Shri P.S. Choudhary otherwise Senior Loco Inspector (Safety), Eastern Railway, Malda.

..... Respondents.

- By Advocate(s): - Mr. S.K. Ravi, Standing Counsel for Railways.

ORDER

Per A.K. Upadhyay, A.M.:- The applicant has filed this OA seeking the following reliefs:-

“(i) For quashing the order dated 31.12.2004 (A-1) passed by the respondent no. 5, Senior Divisional Mechanical Engineer, eastern Railway, Malda.

(ii) For quashing the alleged Appellate Order passed by the alleged appellate authority after calling the same from the respondent authorities as has never been served upon the applicant but intimated to him vide an Order contained in letter bearing No. MP/1122/5/09/2004/610 dated 02.06.2005 (A-2) issued by the said respondent No. 5, Senior Divisional Mechanical Engineer, Malda.

(iii) For quashing the Letter/Order dated 02.06.2005 (A-2) issued by the said respondent no. 5, Senior Divisional Mechanical Engineer, Eastern Railway, Malda by which it has been illegally, arbitrarily and malafidely intimated to the applicant that the appellate authority has rejected the appeal of the applicant by making the following observations- “Considering seriousness of the ‘averted collusion’ the punishment given by the Disciplinary Authority does not deserve any review. Punishment is to stay.

(iv) For quashing the Memorandum/Chargesheet dated 17.05.2004 (A-3) issued by the respondent No. 5, Senior Divisional Mechanical Engineer, Malda by which toally vague, misconceived false and frivolous charge has been leveled against the applicant without his any fault and only on extraneous considerations.

(v) For quashing of the 2nd Enquiry Report dated 07.12.2004 (A-4) prepared by the 2nd Enquiry Officer, Shri P.S. Choudhary, SLI (Safety), Malda being totally illegal, arbitrary and malafide.

(vi) For holding the Order dtd 31.12.2004 (A-1), alleged Appellate Authority, Order contained in letter dated 02.06.2005 (A-2) and Memorandum dated 17.05.2004 (A-3) etc. cannot sustain in the eye of law in view of the Order dated 25.02.2012 (A-19) passed in Checking case No. 18 of 2004 and Trail No. 64 of 2012 titled State Versus Ajay Kumar Singh and others after full trail by Shri Diwakar Pandey, Civil Judge (Jr. Division)- II, Sahibganj.

(vii) For direction upon the respondents to grant all consequential benefits to the applicant including promotion as well as arrears of salaries along with appropriate rate of interest etc.

(viii) For any other appropriate relief or reliefs, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. A charge sheet was issued against the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 on 07.05.2014 alleging that on 24.04.2004 while the applicant was working as Diesel Assistant Driver (DAD) of 3403UP with engine no. 16541 WDM2/JNP he disregarded UP Outer and Home signal on 'ON' condition of Barharwa station and entered on Platform No. 1 without authority at about 3.58 hrs which could have collided with 3024DN. The Driver of 3024DN who was about to enter platform no. 1 with proper authority controlled his train and stopped well away from 3403UP on platform no. 1. Thus, a collision was avoided. The fact finding enquiry fixed the primary responsibility on the applicant along with two other operating staff of the train 3403UP. Shri S.K. Das, LI was nominated as the Inquiry Officer. However, this enquiry

was cancelled by the Disciplinary Authority and another officer Shri P.S Choudhary, SLI/Safety was appointed to complete the enquiry.

3. In the enquiry conducted by Shri P. S. Choudhary the applicant appeared and also cross-examined witnesses. The enquiry officer gave his finding that the charge against the applicant that he disregarded UP Outer and Home signals and overshoot both the signals and entered into platform no. 1 without authority, was proved. The Disciplinary Authority after considering the enquiry report, the applicant's representation and other materials passed punishment order dated 31.12.2004 (Annexure-1) imposing punishment of withholding next promotion till retirement. The applicant filed an appeal. The Appellate Authority's order was conveyed by the Sr. DME by order dated 02.06.2005 (Annexure-2) which stated *"Considering seriousness of the 'averted collusion' the punishment given by the Disciplinary Authority does not deserve any review. Punishment is to stay"*. Both these orders have been challenged by the applicant in the present OA. Besides, the applicant has also challenged the charge sheet and the enquiry report.

4. A criminal case was also instituted against the applicant under Section 175 of the Railway Act vide Trial Case No. 64 of 2012 before the Civil Judge, Sahebganj in which the Learned Judge vide order dated 25.02.2012 acquitted the applicant and another accused person Ajay Kumar Singh.

5. The learned counsel for the applicant Shri Gautam Saha mainly took the following grounds for challenging the authority's decision:-

- (i) The Sr. DME who issued the charge memo was one of the members of the Fact Finding Committee. Therefore, the charge memo and entire disciplinary proceeding is vitiated.
- (ii) The Disciplinary Authority is not competent to direct 'second enquiry'. Therefore, the enquiry report submitted by Shri P.S. Choudhary is void and no punishment can be given on the basis of that enquiry report.
- (iii) The applicant was simply given an intimation by the letter dated 02.06.2005 (Annexure -2) about the order of the Appellate Authority but the order itself was not served upon him.
- (iv) For the same allegation, the criminal court has acquitted him. Therefore, no punishment can be given in the light of his acquittal.

6. On facts of the case the learned counsel for the applicant Shri Saha submitted that the train 3043UP was a through train having no stoppage at Barharwa, therefore, the driver of the other train 3024 DN was responsible.

7. The Tribunal noted in its order dated 04.12.2013 that the case was barred by limitation. The applicant was directed to satisfy the court first on the point of limitation on the next date. Thereafter, for more than two years no action was taken by the applicant. A petition for condonation was filed vide MA/050/00040/2016 which was objected by the respondents. At the time of the argument the Standing Counsel for the Railways, Shri SK

Ravi, again raised a strong objection on the ground of limitation that the punishment order of the Disciplinary Authority was given in December, 2004 and Appellate Authority's order was passed on June, 2005. This OA has been filed more than 7 years after the said order, therefore, the OA is fit to be dismissed on the ground of limitation itself.

8. Shri SK Ravi, counsel for the respondents, also countered the other points raised by the applicant and stated that even though the same Sr. DME Shri Gaurav Agarwal who was a member of the Fact Finding Committee issued the charge memo, the enquiry officer was different and the Sr. DME, who considered the enquiry report and passed the penalty order as Disciplinary Authority, namely, S.K. Bharti, was different. Therefore, the applicant is in no way prejudiced. Shri Ravi further submitted that in administrative exigencies the Disciplinary Authority has the power to change the enquiry officer; therefore, it is wrong to say that a second enquiry was conducted against the applicant. It was continuation of the same enquiry.

9. Shri Ravi further argued that due process has been followed and the requirement of natural justice has been met after which the charges have been proved. Under the Railways guidelines averted collusion involving a train is taken as a very serious incident and as per Railway Board's letter No. 99/Safety(A&R)/6/1 dated 23.04.1999, the prescribed penalty for staff directly held responsible

for the incident is removal from service. The authorities have shown compassion to the applicant and given him a lesser penalty.

10. Shri Gautam Saha in his condonation petition has mentioned some judgments of the Hon'ble Supreme Court to the effect that where a question of substantive justice is involved, the courts should be liberal in condoning delay. He also sought to argue that the applicant was waiting for the disposal of the criminal case.

11. Heard the parties and perused the documents.

12. Since the Tribunal has already taken a view that this case is barred by limitation, we have to first examine the issue of limitation. While examining this, we have to necessarily refer to the facts under issue broadly to see if there is overwhelming equity in favour of the applicant justifying condonation of delay.

13. It is now well settled in law in several judicial pronouncements by the Hon'ble Supreme Court that the disciplinary proceeding and criminal proceeding can go on simultaneously. We refer to the cases of **Captain M. Paul Antony Vs. Bharat Gold Mines** (AIR 1999 SC 1416), **Karnataka SRTC Vs. M.G. Vittal Rao** (2012) 1 SCC 442 , **Stanzen Toyotetsu India Pvt. Limited Vs. Girish V. Others** (2014) 3 SCC 636, and a recent judgment **SBI Vs. Neelam Nag** (2016) 9 SCC 491. In any case, this point was never agitated by the applicant before the Tribunal until seven years after the conclusion of the departmental proceeding. Thus, the disciplinary proceeding has independently concluded after the applicant was informed in

February, 2005 of the Appellate Authority's order. He has filed this OA seven years after that. The applicant does not deny having received this communication. Shri Saha sought to make a hyper-technical point that the letter dated 02.06.2005 (Annexure-2) was merely intimation about the Appellate Authority's order, but not the main order. This does not help him, because the key issue for considering the point of limitation is when cause of action arose. The cause of action arises when the applicant is made aware of the adverse order against him. Therefore, this OA is clearly barred by limitation which is prescribed as one year under Section 21 of the AT Act, whereas this OA has been filed after seven years.

14. Now, we deal with the question: Does the acquittal by the criminal court on 25.02.2012 alter the situation and bring the matter alive? The law is fairly well-settled on this issue also. The standard of proof in a criminal trial and departmental proceedings are different. The strict technical rules of evidence of criminal trial are not necessary in a disciplinary proceeding which is based on preponderance of probability. The Hon'ble Supreme Court has also held in a number of cases that acquittal in a criminal trial does bar the authorities to continue and take final decision in the departmental proceeding. Acquittal does not entitle the charged official to claim reinstatement in service as a matter of right. We refer to **(i) Jang Bahadur Singh Vs. Baij Nath Tiwary** reported in AIR 1969 SC 30, **(ii) Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. &**

Ors. reported in 1988(4) SCC 319, **(iii) Nelson Motis Vs. Union of India & Ors.** reported in (1992) 4 SCC 711, **(iv) State of Rajasthan Vs. B.K. Meena & Ors.** reported in (1996) 6 SCC 417 **(iv) Ajit Kumar Nag Vs. Indian Oil Corpn. Ltd.** (2005) 7 SCC 764, **(v) State of Karnataka Vs. T. Venkataramanappa** (1996) 6 SCC 455 and **(vi) State of A.P. Vs. Allabaksh** (2000) 10 SCC 177 and **(vii) Corporation of the City of Nagpur Vs. Ramchandra** (AIR 1994 SC 626). In this view of the law, the subsequent acquittal in a criminal case has no bearing on a punishment already imposed by virtue of disciplinary proceeding seven years ago.

15. In view of the aforesaid discussion, the decision in the criminal trial does not give a fresh cause of action to the applicant. The adverse order on the applicant was passed by the authorities in 2004/2005. Therefore, the cause of action has to be counted from that period and the application has been filed after seven years of cause of action.

16. Now, we come to the last question whether there is overwhelming equity in favour of the applicant persuading us to condone the delay. This is an incident of averted collusion between two trains. This is an operational matter and the authorities are the best judge to decide who was responsible between the crew of the two trains. The courts are not fact finding bodies, nor are the courts supposed to sit in appeal over the disciplinary authority's assessment of evidence and punishment. The scope of judicial review in

disciplinary proceeding is limited to see if there are apparent illegalities or serious violation of natural justice, or perverse finding.

The authorities have come to the conclusion after proper enquiry that between the crew of the two trains, i.e. 3403UP and 3024DN, those of 3403 UP were responsible. Such incidents are rightly treated very seriously by the Railways. In spite of the prescribed punishment of removal from service, the authorities have been compassionate and have retained him in service, though debarring him from future promotions. In the light of this, we are not persuaded that there is an overwhelming equity in favour of the applicant to overturn the punishment order after such a long delay.

17. In conclusion, the MA No. 40 of 2016 for condonation of delay is dismissed. Accordingly, the OA No. 595 of 2012 is also dismissed.

No order as to costs

[Jayesh V. Bhairaiva]
Judicial Member
Srk.

[A.K Upadhyay]
Administrative Member